IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17650 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAGINBHAIN DAHYABHAI THAKORE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17650 of 2003
M/S THAKKAR ASSOC. for Petitioner No. 1
GOVERNMENT PLEADER for Respondent No. 1-3
RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 26/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 19/11/03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that four F.I.Rs were registered against him before different Police Stations between 03/11/01 and 25/10/03 for offences punishable u/s.66, 65 & 81 of the Bombay Prohibition Act, 1949. It was also alleged that two witnesses had given statements against the petitioner.

3. On the strength of the aforesaid four registered offences and two statements of unnamed witnesses, the detaining authority found the petitioner to be a "bootlegger" and with a view to prevent him from carrying on his alleged bootlegging activities, which amounted to a threat to public order, an order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that the statements of witnesses in the criminal offence were demanded by the petitioner by way of a representation but they were not supplied to the petitioner. It has also been contended that the names of the witnesses have not been communicated to the petitioner, and therefore, the petitioner's right of submission of an effective representation has been denied. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. At the final hearing, the learned advocate for the petitioner has drawn my attention to the representation made on behalf of the petitioner to the detaining authority placed at Annexure 'C'. On going through para 4 of the said representation, it transpires that the petitioner had claimed a copy of the statement of Varsinh Narsinh, who happens to be a witness in the criminal case against the petitioner.

7. The respondents have filed affidavit of the

detaining authority at page 22. On going through the said affidavit, it does not transpire that a copy of the statement of the said witness was provided to the petitioner, in pursuance of his request in the said representation. This shows that the petitioner was not supplied with a copy of the statement of the witness despite his demand. It is not much in dispute that the statement of the said witness was relevant for the purpose of dealing with the criminal case agaisnt the petitioner, and therefore, it was relevant for the purpose of making an effective representation against his detention. Therefore, the petitioner was denied of a copy of a document relevant for the purpose of making an effective representation. This shows that the right of the petitioner to submit an effective representation has been denied.

8. It is well settled that a right to make an effective representation under Article 22(5) of the Constitution of India is a valuable right available with the detenu. If the said right has been negatived or denied, then further continuance of the detention of the detenu cannot be sustained in the eye of law. In the present case, we find that the said right has been denied to the petitioner, and therefore, the order of detention is required to be quashed and set aside on this ground itself.

9. For the foregoing reason, this petition is allowed. The impugned order of detention dated 19/11/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Naginbhai Dahyabhai Thakore, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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